

# Prevailing Wages in Service Contracts

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## McNamara–O’Hara Service Contract Act (SCA) (41 USC §351 *et seq.*; 29 CFR Parts 4, 6, and 8)

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### Who is Covered

The McNamara–O’Hara Service Contract Act (SCA) covers contracts entered into by federal and District of Columbia agencies where the principal purpose of the contract is to furnish services in the U.S. through the use of “service employees.” The definition of “service employee” includes any employee engaged in performing services on a covered contract other than a bona fide executive, administrative, or professional employee who meets the exemption criteria set forth in 29 CFR Part 541.

The Act does not apply to certain types of contractual services. These statutory exemptions include:

- Contracts for construction, alteration, and/or repair of public buildings or public works, including painting and decorating (those covered by the Davis–Bacon Act);
- Work required in accordance with the provisions of the Walsh–Healey Public Contracts Act;
- Contracts for transporting freight or personnel where published tariff rates are in effect;
- Contracts for furnishing services by radio, telephone, telegraph, or cable companies subject to the Communications Act of 1934;
- Contracts for public utility services;
- Employment contracts providing for direct services to a federal agency by an individual or individuals;
- Contracts for operating postal contract stations for the U.S. Postal Service;
- Services performed outside the U.S. (except in territories administered by the U.S., as defined in the Act); and
- Contracts administratively exempted by the Secretary of Labor in special circumstances because of the public interest or to avoid serious impairment of government business.

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### Basic Provisions/Requirements

The Act requires contractors and subcontractors performing services on prime contracts in excess of \$2,500 to pay service employees in various classes no less

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than the wage rates and fringe benefits found prevailing in the locality, or the rates (including prospective increases) contained in a predecessor contractor's collective bargaining agreement. The Department of Labor issues wage determinations on a contract-by-contract basis in response to specific requests from contracting agencies. These determinations are incorporated into the contract.

For contracts equal to or less than \$2,500, contractors are required to pay the federal minimum wage of \$5.15 an hour (as of September 1, 1997) as provided in Section 6(a)(1) of the Fair Labor Standards Act. Contractors must also, under the provisions of the Contract Work Hours and Safety Standards Act and the Fair Labor Standards Act, pay employees at least one and one-half times their regular rate of pay for all hours worked over 40 in a workweek.

Finally, employers must notify employees working in connection with the contract of the compensation due them under the wage and fringe benefits provisions of the contract.

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## **Employee Rights**

The SCA provides covered service workers on federal service contracts the right to receive at least the locally prevailing wage rate and fringe benefits, as determined by the Department of Labor, for the type of work performed. The Wage and Hour Division of the Employment Standards Administration accepts complaints of alleged SCA wage violations.

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## **Compliance Assistance Available**

The Wage and Hour Division ([www.wagehour.dol.gov](http://www.wagehour.dol.gov)) of the Employment Standards Administration enforces the wage and hour requirements of the Act. More detailed compliance assistance information, including copies of explanatory brochures and regulatory and interpretative materials, may be obtained by contacting the Wage and Hour Division's local offices ([www.dol.gov/esa/contacts/whd/america2.htm](http://www.dol.gov/esa/contacts/whd/america2.htm)). Compliance assistance information may also be obtained on the Wage and Hour Division's Web site ([www.wagehour.dol.gov](http://www.wagehour.dol.gov)) or by contacting the Wage and Hour Division help line at 1-866-4USWAGE.

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## **Penalties/Sanctions**

Violations of the SCA may result in contract terminations and liability for any resulting costs to the government, withholding of contract payments in sufficient amounts to cover wage and fringe benefit underpayments, legal action to recover the underpayments, and debarment from future contracts for up to three years.

Contractors and subcontractors may challenge determinations of violations and debarment before an Administrative Law Judge. Contractors and subcontractors may appeal decisions of Administrative Law Judges to the Administrative Review Board. Final Board determinations on violations and debarment may be appealed to and are enforceable through the federal courts.

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## **Relation to State, Local, and Other Federal Laws**

This Act applies only to contracts awarded by the federal or District of Columbia governments. As noted above, contractors are required to compensate employees working in connection with covered contracts for overtime work in accordance with the overtime pay standards of the Fair Labor Standards Act and the Contract Work Hours and Safety Standards Act.